KIE GWAN SHIPPING (M) SDN. BHD.

v.

FEDERAL FLOUR MILLS BHD.

HIGH COURT BORNEO, KOTA KINABALU
ABU MANSOR ALI J
[CIVIL SUIT NO. K.1282 OF 1985]
28 NOVEMBER 1986

CIVIL PROCEDURE: *Jurisdiction of High Court - Section 23 of the Courts of Judicature Act - Cause of action in relation to debts - When and where does it arise - Formation of contract - Schedule 12 of the Courts of Judicature Act.*

The defendants, a company, from time to time sold goods to Kobos Enterprise Sdn. Bhd. of Kota Kinabalu, in connection with which the defendants gave trade rebates in the form of credit notes to the said Kobos Enterprises. Kobos Enterprises by deed of assignment, with notice to the defendants, assigned to the plaintiffs 31 credit notes. The defendants refused to honour these notes or otherwise make payments to the plaintiffs. The plaintiffs filed action claiming the sum due, interest and costs. The defendants alleged that the Court had no jurisdiction to determine the action, pursuant to s. 23 of the Courts of Judicature Act for 3 reasons:

(a) The defendants' registered address was at a place outside the local jurisdiction of the High Court Borneo, Kota Kinabalu.

(b) The defendants had no business/registered address in Kota Kinabalu.

(c) Since the credit notes were issued in Kuala Lumpur, the cause of action arose there and the only forum for determining the matter was the High Court Malaya. The defendants applied for an order that the writ of summons and all proceedings be stayed under the inherent jurisdiction of the Court on the ground that the Court had no jurisdiction over the matter pursuant to s. 23 of the Courts of Judicature Act or alternatively on the ground that this action was an abuse of the process of Court as the convenient and natural forum was the High Court Malaya, and for costs.

Section 23(1) of the Courts of Judicature Act 1964 provides

> Subject to limitations contained in Art. 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where-
>
> (a) the cause of action arose;
>
> (b) the defendant or one of several defendants resides or has his place of business; or
>
> (c) The facts on which the proceedings are based or are alleged to have occurred.
>
> (d) ... (not relevant)
>
> within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where the parties consent in writing within the local jurisdiction of the other High Court.

Held:

[1] There was no submissions to jurisdiction in this action as was evident from the objection raised by the defendants and their application to have the action stayed.

[2] The cause of action arose when the plaintiffs demanded payment of the credit notes from the defendants whose office was in Kuala Lumpur and the refusal was made in Kuala Lumpur. The cause of action arose in Kuala Lumpur.

[3] The offer to buy came from Kobos and was accepted by the defendants in Kuala Lumpur. In the course of trading the credit notes were issued. The facts on which the proceedings are based or are alleged to have occurred also arose in Kuala Lumpur.

[4] The case was held to be outside the jurisdiction of the Court pursuant to s. 23 of the Act.

[5] In any event since the convenient forum for the matter was also Kuala Lumpur, the Court rejected the application for stay, pursuant to its powers under Clause 12 of the Schedule to Courts of Judicature Act and ordered that the proceedings be transferred to the relevant decision of the High Court Malaya.

[Application for stay rejected. Defendants to file their defence within two weeks.]

Cases referred to:
Rawley v. Rawley 1 QBD 460
Seldon v. Wilde [1910] 2 KB 9

Legislation referred to:
Courts of Judicature Act 1964, ss. 23, (1), (1)(a), (1)(b), (1)(c)

Other source referred to:
Stroud's Judicial Dictionary, Vol. 1, p. 407, 696

For the plaintiffs - Roland Chin Kok Fah; M/s. Chin Lau Wong & Foo Co.
For the defendants - Antony Roderic Fernandez; M/s. Shelley Yap Leong Tseu Chong Chia & Co.

JUDGMENT

Abu Mansor Ali J:

By their summons-in-chambers dated 9 January 1986, the defendants applied for an order that the writ of summons herein and all proceedings be stayed under the inherent jurisdiction of the Court on the ground that the Court had no jurisdiction over the matter pursuant to s. 23 of the Courts of Judicature Act or alternatively on the ground that this action is an abuse of the process of Court as the convenient and natural form is the High Court Malaya and they ask for cost. This matter was adjourned for argument to open Court and after hearing arguments I reserved the matter for decision.

From the statement of claim the facts of this case are as follows. The plaintiffs, a company incorporated in Malaysia, carry on business of shipping and a carrier of goods. The defendants, another company incorporated, are engaged in manufacturing and sale of animal feed. The plaintiffs state that from time to time the defendants had sold their goods to Kobos Enterprise Sdn. Bhd. of Kota Kinabalu and in connection therewith the defendants gave trade rebates in the form of credit notes to the said Kobos Enterprise. By a deed of assignment dated 4 March 1985 Kobos Enterprise assigned to the plaintiffs absolutely 31 credit notes issued them by the defendants totalling RM306,359.77. Notice of such assignment was given to the defendants but the defendants refused to honour or otherwise make payments to the plaintiffs. The plaintiffs therefore claim RM306,359.77, interest and costs.

The defendants' application is supported by the affidavit of Cheong Chee Cheng, assistant sales manager of the defendants, sworn on 10 December 1985. The plaintiffs opposed this application and filed an affidavit by Yap Ten Seng, the Kota Kinabalu representative of the plaintiffs, affirmed on 14 March 1986.

In para. 3 of defendants' affidavit they alleged that the Court has no jurisdiction to determine this action pursuant to s. 23 of the Courts of Judicature Act and they advanced three grounds:

(a) The defendants have their business/registered address at 8th Floor, Wisma MISC, Jalan Conlay, Kuala Lumpur, a place outside the local jurisdiction of the High Court Borneo, Kota Kinabalu.

(b) The defendants have no business/registered address in Kota Kinabalu.

(c) The plaintiff's action is in respect of 31 credit notes issued to the Kobos Enterprise Sdn. Bhd. by the defendants. The credit notes were purportedly assigned to the plaintiffs who now sue on them. Defendants believe that as the credit notes were issued in Kuala Lumpur the cause of action arose there. In the premises the defendants believed that the only forum for determination of this matter is the High Court Malaya.

Perhaps it is covenient to set down s. 23(1) of the Courts of Judicature Act 1964 ("the Act"):

> Subject to the limitations contained in Artcle 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where-
>
> (a) the cause of action arose; or
>
> (b) the defendant or one of several defendants resides or has his place of business or
>
> (c) the facts on which the proceedings are based or are alleged to have occurred; or
>
> (d) ... (not relevant);
>
> within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where the parties consent in writing within the local jurisdiction of the other High Court.

Under s. 23(a) of the Act the defendants' Counsel submitted that the Court would not have jurisdiction as the alleged breach is the defendants' refusal to pay on the credit notes and this occurred in Kuala Lumpur. It therefore followed they say the cause of action arose in Kuala Lumpur. Defendants' Counsel emphasised that the cause of action is based on the credit notes and not the assignment.

The plaintiffs' Counsel on the other hand conceded that the cause of action in contract is the breach of the contract and the breach here is the refusal of the defendants, whose office is in Kuala Lumpur, to pay on the credit notes. They, however, reasoned that since the credit notes originally belonged to Kobos Enterprise of Kota Kinabalu and they were assigned to the plaintiffs, therefore stopped into Kobos's shoes. Kobos would be informed by the defendants of their refusal to pay in Kota Kinabalu. Alternatively the plaintiffs' solicitor was informed of this refusal to pay by the defendants in Kota Kinabalu and he submitted that, as both solicitors are practising in Kota Kinabalu, the Court is invited to infer there is a submission to its jurisdiction by the conduct of the defendants.

For a start I do not think in this particular action there has been submission to jurisdiction. This is evident by the objection raised by the defendants and their application to have this action stayed.

Stroud's *Judicial Dictionary*, Vol. 1, p. 407, gives "cause of action" differs materially from "action"; the "cause" of an action is that which forms or relates to its basis, as distinct from matter of procedure prior to the action being brought, e.g., a solicitor cannot sue his client for his bill of costs until one month after his delivery ... but the "cause" of such action is the work..."

In my view the cause of action in the present case is the debt created by the credit notes issued by the defendant company which had been assigned to the plaintiffs. For the definition of a debt Stroud's *Judicial Dictionary* at p. 696 says: "A debt is a sum payable in respect of a liquidated money demand recoverable by action (*Rawley v. Rawley* 1 QBD 460; see *Seldon v. Wilde* [1910] 2 KB 9)."

It cannot be denied, in my view, that in the present case the cause of action arose when the plaintiffs demanded the payment of the credit notes from the defendants whose office is in Kuala Lumpur and the refusal was done in Kuala Lumpur. I am quite clear that the cause of action of the present case arose in Kuala Lumpur.

By saying so we also answer s. 23(b) of the Judicature Act and as regards s. 23(c) the facts on which proceedings are based exist or are alleged to have occurred, the defendants' and plaintiffs' Counsels had their own interpretation as to this. The defendants' Counsel said from the formation of the contract to shipment of the goods and issuance of the credit notes all took place in Kuala Lumpur. For the plaintiffs, on the other hand, they do not accept the defendants' contention. They say it was Kobos who accepted its acceptance of the defendants' offer by post.

I am in agreement with the submission of the defendants' Counsel. To accept the submission of the plaintiffs is not quite realistic. It is clear, as trade practice takes place or goes, any invitation by the defendants, I am of the view, would only be an invitation to treat. The offer to buy naturally came from Kobos and accepted by the defendants in Kuala Lumpur. In the course of trading they issued the credit notes.

Having said the above, I am clearly of the view that it is a case which is outside the jurisdicrtion of this Court to hear pursuant to s. 23 of the Act.

In case I am in error, I rule that the convenient forum for this matter is also Kuala Lumpur as both plaintiffs and defendants have their registered offices in Kuala Lumpur. What is needed from Kota Kinabalu is merely the evidence that Kobos was issued with the credit notes which in my view is beyond dispute but in the main for the proper conduct of this matter since both litigants are in Kuala Lumpur it cannot be too strongly stressed it is clear to the Court that it is for the convenience of both parties that the proceedings be conducted in Kuala Lumpur.

The application for a stay is hereby rejected and in the exercise of my powers under Clause 12 of the Schedule to the Courts of Judicature Act 1964, I hereby order that this proceeding be transferred to the relevant division of the High Court in Malaya, Kuala Lumpur, and I direct the Deputy Registrar of the High Court Sabah & Sarawak, Kota Kinabalu, to act on it accordingly. The cost of the application is cost in the cause. As prayed by defendants' Counsel I make a consequential order that the defendants file their defence in two weeks from today's date.

Also found at [1988] 2 CLJ 308